

## Exhibit C

Response Under 37 CFR § 1.116 \* -- Expedited Procedure -- Examining Group 3774  
Attorney Ref.: 3124.006A  
U.S. Serial No.: 10/598,223

### IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Schwartz Confirmation No.: 1470  
Serial No.: 10/598,223 Examiner: LEVINE, Joshua H.  
Filing Date: August 22, 2006 Group Art Unit: 3774  
Title: ARTICULAR CARTILAGE FIXATION DEVICE AND METHOD

#### CERTIFICATE OF ELECTRONIC TRANSMISSION

I hereby certify that this correspondence is being electronically transmitted to  
Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia  
22313-1450, on May 5, 2010.

  
Eleni M. Pappas

Date of Signature: May 5, 2010

Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

#### RESPONSE TO OFFICE ACTION AFTER FINAL

Dear Sir:

#### Introductory Comments

This Response After Final is being submitted in reply to the Office Action made Final mailed January 5, 2010 for the above-referenced application. Since this Response is being filed on or before May 5, 2010, this response includes a Petition for a 1-month extension of time to file and the requisite Petition Fee [\$65].

**Amendments to the Claims** are reflected in the listing of claims that begins on page 2 of this paper. **Remarks** begin on page 6 of this paper.

Amendments to the Claims

The following claim listing reflects the status of the claims pending in this application.

1-34. (*Canceled*)

35. (*Currently amended*) A surgical device for repairing cartilage tissue at a defect site in a patient, said surgical device comprising:

a biocompatible anchor shaped to sit within tissue at the defect site and retain a section of cartilage replacement material in the defect site;

a biocompatible flexible member traversing through said section of cartilage replacement material multiple times, a distal end of said flexible member configured to attach mechanically locked to said section of cartilage replacement material at an attachment point and thread-a proximal end of said flexible member threaded through said anchor at least twice to form at least two pulley mechanisms; and

a sliding device about said flexible member, wherein, when in use, the at least two pulley mechanisms are actuated to translate the sliding device distally along said flexible member to a position proximate said section of cartilage replacement material to locate and retain said section of cartilage replacement material in the defect site.

36. (*Currently amended*) The device of Claim 35, wherein said flexible member comprises a first end and a second end, wherein the first distal end is positioned at said attachment point and the second proximal end comprising the sliding device positioned around a proximal portion of said flexible member.

37. (*Canceled*)

38. (*Previously Presented*) The device of Claim 35, wherein said sliding device comprises a slipknot fashioned about said flexible member which, when tensioned about said flexible member, retains said section of cartilage replacement material in the defect site.

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39. (*Previously presented*) The device of Claim 35, wherein said section of cartilage replacement material is formed at least in part of a material selected from the group consisting of non-woven materials and foam materials.

40. (*Previously Presented*) The device of Claim 35, wherein said section of cartilage replacement material is formed at least in part of a synthetic polymer selected from the group consisting of polycsters and co-polymers of polyesters.

41. (*Previously presented*) The device of Claim 35, wherein said section of cartilage replacement material is a scaffold derived from at least one biological material selected from the group consisting of proteins, saccharides, and collagenous tissue.

42. (*Previously presented*) The device of Claim 35, wherein said flexible member is a braided suture.

43. (*Previously Presented*) The device of Claim 35, wherein said sliding device comprises a stopping member, said stopping member being engageable with said section of cartilage replacement material.

44. (*Canceled*)

45. (*Previously presented*) The device of Claim 43, wherein said stopping member is a slipknot.

46. (*Previously presented*) A surgical device for implanting a section of cartilage replacement material in a defect site in a patient, said surgical device comprising:

at least one biocompatible anchor shaped to sit within tissue at the defect site to retain said section in the defect site; and

a biocompatible flexible member having first and second ends, said first end of said flexible member being attachable mechanically locked to the section of cartilage replacement material at an attachment point, said second end of said flexible member being threaded through said anchor at least twice to form at least two pulley mechanisms, and said second end is looped around a proximal portion of said flexible member to form a stopping device around the

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proximal portion, wherein distal movement of the stopping device along the proximal portion of said flexible member facilitates positioning of the section of cartilage replacement material within the defect site.

47. (*Previously presented*) The device of Claim 46, wherein said stopping device is engageable with a proximal surface of the section of cartilage replacement material.

48. (*Canceled*)

49. (*Previously presented*) The device of Claim 47, wherein said stopping device is a slipknot.

50. (*Canceled*)

51. (*Previously Presented*) The device of Claim 40, wherein the polyesters and copolymers of polyesters are at least one of poly-L-lactic acid (PLLA), poly-D-lactic acid (D-PLA), polyglycolic acid (PGA), polydioxinone (PDO), polycaprolactone (PCL), polyvinyl alcohol (PVA), polyethylene oxide (PEO), and poly(ethylene terephthalate).

52. (*Previously presented*) The device of Claim 41, wherein the proteins are at least one of tyrosine and polysaccharides.

53. (*Previously presented*) The device of Claim 41, wherein the saccharides are at least one of chitosan and hyaluronic acid.

54. (*Previously Presented*) The device of Claim 35, wherein the at least two pulley mechanisms comprise a proximal looped end and two distal loops with the proximal looped end positioned through the sliding device, and wherein, upon tensioning of the proximal looped end, the two distal loops correspondingly slide thorough the anchor to facilitate decreasing the distance between said attachment point and said anchor thereby positioning said section of cartilage replacement material in the defect site.

55. (*Previously presented*) The device of claim 35, wherein the section of cartilage replacement material comprises a scaffold, the scaffold being fabricated from a biocompatible material for facilitating at least one of chondral and osteochondral integration.

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56. (*Previously Presented*) The device of Claim 35, wherein the device further comprises the section of cartilage replacement material.

57. (*Previously Presented*) The device of Claim 35, wherein the sliding device comprises a lockable sliding device.

58. (*New*) The device of Claim 35, wherein mechanically locked comprises at least one of tied, integrally molded, and glued.

59. (*New*) The device of Claim 35, wherein mechanically locked comprises attached to a base attached to the section of cartilage replacement material.

60. (*New*) The device of Claim 46, wherein mechanically locked comprises at least one of tied, integrally molded, and glued.

61. (*New*) The device of Claim 46, wherein mechanically locked comprises attached to a base attached to the section of cartilage replacement material.

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**REMARKS**

The Applicant requests that the above Amendment be entered and the application examined as amended and in view of the remarks below.

By this Amendment the Applicant amended claims 1 and 46, and amended claim 2 to comply with amended claim 1, and introduced new claims 58-61.

Support for the amendment of claim 1 is found in paragraph [0091] of the as-published application. Please note that the description of the “attachment” that appears in this paragraph also applies to the attachment of the flexible member to the cartilage replacement material as described in the last sentence of paragraph [0091].

The inventions recited in claims 58-61 also find support in paragraph [0091].

Claims 35, 36, 38-43, 45-47, 49, and 51 through 61 are now pending in this application.

**I Acknowledgement of Assistance of Examiner**

The Applicant wishes to acknowledge with appreciation the assistance that the Applicant's undersigned Agent received from Examiner Joshua Levine in a phone interview held on May 4, 2010. The Applicant believes that Mr. Levine's assistance markedly advanced this application to allowance.

**II Response to Obviousness Rejection Based upon Hayhurst and Fallin**

Under the heading “Response to Arguments” and in paragraphs 4-12 of the Action, the Patent Office maintained its rejection of claims 35, 36, 38, 43, 45-47, 49, 54, and 55 pursuant to 35 U.S.C. §103(a) as obvious in view of the combined teachings of U.S. Patent 5,647,874 of Hayhurst [herein “Hayhurst”] and U.S. Patent 6,9782,027 of Fallin, et al. [herein “Fallin”]. The Applicant respectfully submits that the above amendments to claims 35 and 46 overcome these rejections.

As discussed in the above-referenced phone interview, Examiner Levine suggested that the attachment of the flexible member to the replacement section may distinguish the claimed

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invention from the cited art. Though helpful alternatives were discussed, the Applicant submits that the amendment recited in claims 35 and 46 is completely supported in the as-filed application and clearly distinguishes from the engagement of the suture with the tissue disclosed by Hayhurst.

The Applicant also submits that Hayhurst's and Fallin's failure to teach or suggest a "flexible member traversing through said section of cartilage replacement material multiple times" also distinguishes the claimed invention from the cited art.

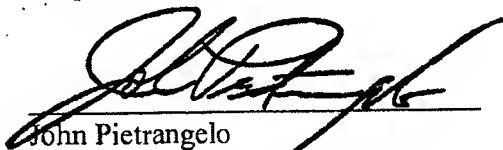
The Applicant respectfully requests that these rejections of claims 35 and 46 as obvious in view of Hayhurst and Fallin be reconsidered and withdrawn

### III CONCLUSION

The Applicant believes that the above Amendment and Remarks place the application in allowable form. An early and favorable action on the merits of the application is requested.

If a telephone conference would be of assistance in advancing prosecution of the subject application, the Applicant's undersigned Agent invites the Examiner to telephone him at the number provided.

Respectfully submitted,



John Pietrangelo  
Agent for Applicants  
Registration No. 39,331

Dated: May 5, 2010

**HESLIN ROTHENBERG FARLEY & MESITI P.C.**  
5 Columbia Circle  
Albany, New York 12203-5160  
Telephone: (518) 452-5600  
Facsimile: (518) 452-5579